

1 **IN THE SUPREME COURT OF THE STATE OF NEW MEXICO**

2 **May 21, 2020**

3 **NO. 20-8500-018**

4 **IN THE MATTER OF COURT ORDERS**
5 **REQUIRING VISITATION BETWEEN**
6 **CHILDREN IN CUSTODY OF THE NEW MEXICO**
7 **CHILDREN, YOUTH AND FAMILIES DEPARTMENT AND**
8 **RESPONDENTS UNDER THE ABUSE AND NEGLECT ACT**
9 **DURING THE COVID-19 PUBLIC HEALTH EMERGENCY**

10 **ORDER**
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13 WHEREAS, on March 27, 2020, in the wake of the public health emergency
14 caused by the spread of COVID-19, this Court entered Order No. 20-8500-009 to
15 stay and amend court orders requiring in-person visits between children in custody
16 of the New Mexico Children, Youth, and Families Department (CYFD) and
17 respondents under the Abuse and Neglect Act in accordance with certain terms set
18 forth in Order No. 20-8500-009;

19 WHEREAS, the provisions in Order No. 20-8500-009 were to remain in
20 effect until April 26, 2020, unless extended, amended, or withdrawn by future
21 order of this Court;

22 WHEREAS, on April 23, 2020, this Court entered Order No. 20-8500-014
23 extending Order No. 20-8500-009 until amended or withdrawn by future order of
24 this Court;

1 WHEREAS, children placed in CYFD custody while abuse and neglect
2 proceedings are pending retain a fundamental liberty interest in their own bodily
3 integrity and general wellbeing, as do all the persons, including foster families and
4 case workers, who care for or provide services to the children and respondents;

5 WHEREAS, respondents of children placed in CYFD custody while abuse
6 and neglect proceedings are pending retain a fundamental liberty interest in the
7 care, custody, and control of their children under the federal and state
8 constitutions, and the Court recognizes that separation from caregivers can be a
9 highly traumatic event in a child's life;

10 WHEREAS, the Court recognizes the importance of achieving an
11 appropriate balance between protecting the health and well-being of children in
12 CYFD custody and the fundamental liberty interests of respondents to have
13 meaningful, in-person visitation with their children given that the health risks
14 posed by the current public health emergency are likely to persist for an extended
15 but indeterminate period of time;

16 WHEREAS, the Court recognizes that court-ordered visitations may be
17 occurring within some regions of New Mexico that are experiencing higher rates of
18 COVID-19 infections and deaths than others; and

19 WHEREAS, the Court having considered the foregoing and being
20 sufficiently advised, Chief Justice Judith K. Nakamura, Justice Barbara J. Vigil,

1 Justice Michael E. Vigil, Justice C. Shannon Bacon, and Justice David K.
2 Thomson concurring;

3 NOW, THEREFORE, IT IS ORDERED that all orders allowing for
4 visitation between children and respondents in pending cases under the Abuse and
5 Neglect Act, NMSA 1978, §§ 32A-4-1 through -35 (2019), shall be reviewed in
6 accordance with the terms of this order;

7 IT IS FURTHER ORDERED that in counties where the COVID-19 regional
8 transmission rate is 1.15 or less as provided by the Governor's COVID-19 in New
9 Mexico: Epidemiologic Update found at <https://cvmodeling.nmhealth.org/> -
10 download the latest modeling update - there is a rebuttable presumption that in-
11 person visits between children in CYFD custody and respondents can be conducted
12 in a safe manner when following New Mexico Department of Health (NMDOH)
13 protocols for minimizing risk of infection. In counties where the COVID-19
14 regional transmission rate is greater than 1.15, there is a rebuttable presumption
15 that in-person visits between children in CYFD custody and respondents is not safe
16 even when following NMDOH protocols for minimizing risk of infection.
17 Information specific to COVID-19 in New Mexico can be found at the NMDOH
18 website, located at <https://cvmodeling.nmhealth.org/>, <https://cv.nmhealth.org/>, and
19 <https://www.newmexico.gov/>;

1 IT IS FURTHER ORDERED that any in-person visitation allowed by the
2 district courts under Order No. 20-8500-009 shall continue as ordered, unless and
3 until amended by the district court;

4 IT IS FURTHER ORDERED that in any case in which in-person visitation
5 was not established or resumed under Order No. 20-8500-009 the parties shall
6 meet and confer to determine whether in-person visitation can be established or
7 resumed in accordance with the terms of this order and NMDOH protocols for
8 minimizing risk of infection;

9 IT IS FURTHER ORDERED that, if the parties agree to establish or resume
10 in-person visitation, CYFD shall present a stipulated order to the district judge for
11 approval setting forth the details of the in-person visitation that shall begin as soon
12 as practicable;

13 IT IS FURTHER ORDERED that, if the parties cannot agree to resuming in-
14 person visitation, CYFD shall file a notice in the district court setting forth the
15 criteria that CYFD believes needs to be met for in-person visitation to be
16 established or resumed in accordance with the terms of this order and NMDOH
17 protocols for minimizing risk of infection;

18 IT IS FURTHER ORDERED that, until an order establishing or resuming
19 in-person visitation is entered by the district court, CYFD shall do the following:

1 (1) continue to make diligent efforts to provide visits between
2 respondents and children through remote means such as by audio-video
3 conferencing, such as FaceTime or a similar service (first preference), or telephone
4 (second preference); and

5 (2) file a report in the district court, and provide copies to all parties and
6 directly to the district court judge via email, on a monthly basis setting forth efforts
7 it has undertaken to maintain contact between respondents and children; and

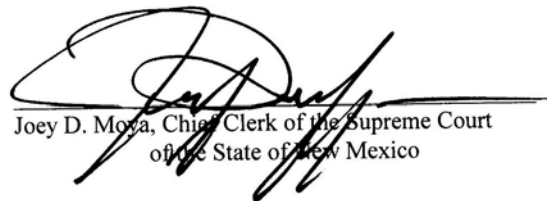
8 IT IS FURTHER ORDERED that, if the parties cannot agree to in-person
9 visitation, any party may file a motion in the district court to allow or restrict in-
10 person visitation; and

11 IT IS FURTHER ORDERED that this order shall remain in effect until
12 amended or withdrawn by future order of this Court.

13 IT IS SO ORDERED.



WITNESS, the Honorable Judith K. Nakamura, Chief Justice of the Supreme Court of the State of New Mexico, and the seal of said Court this 21st day of May, 2020.


Joey D. Moya, Chief Clerk of the Supreme Court
of the State of New Mexico

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